GETTING THE DEAL THROUGH

Dispute Resolution

in 49 jurisdictions worldwide

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Getting the Deal Through is delighted to publish the twelfth edition of *Dispute Resolution*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Ecuador, Hong Kong, Indonesia, Kazakhstan, the Philippines, Portugal and the United Arab Emirates.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Simon Bushell of Latham & Watkins for his continued assistance with this volume.

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Litigation

1 What is the structure of the civil court system?

Michigan has federal courts and state courts. Michigan's state courts include but are not limited to a Supreme Court, a Court of Appeals, circuit courts with general jurisdiction, district courts with limited jurisdiction, probate courts and a court of claims. The Supreme Court hears appeals from the Court of Appeals, the Court of Appeals hears appeals most frequently from the circuit courts, and the circuit courts hear certain appeals from the district courts and probate courts.

There are seven justices in the Supreme Court, which sits in Lansing. There are 28 judges in the Court of Appeals, which sits in Lansing, Grand Rapids, Detroit and Troy.

Michigan circuit courts have general jurisdiction over every action not prohibited by law that has an amount in controversy exceeding US$25,000. There are 57 circuit courts. Most counties have their own circuit court, although some less populous and contiguous counties share circuit courts. The number of judges assigned to each circuit court depends upon the population it serves and the caseload of the court. Michigan recently created a business court docket, assigning business and commercial cases to business court judges. Business court judges are assigned in circuit courts with at least three circuit court judges.

Michigan district courts have limited jurisdiction over cases involving disputes of less than US$25,000. There are approximately 100 district courts. The number of districts per county depends upon population, with larger counties broken into many districts. The number of judges per district is likewise largely dependant upon the population of the district.

Each probate court has jurisdiction in all matters relating to estates of deceased persons, trust administration and appointment of guardians or conservators for minors or incompetent adults. There are 78 probate courts. Most counties have their own probate court, although some less populous and contiguous counties share probate courts. The number of judges per court depends upon population and caseload.

The court of claims hears claims exceeding US$1,000 against the state or one of its divisions. The court of claims is a part of the circuit court in Ingham County. It is seated in Lansing.

The subject-matter jurisdiction of the federal courts is limited to cases involving a federal question or where there is diversity of citizenship between the parties. Federal question jurisdiction exists when the plaintiff asserts a claim arising under the US Constitution, laws or treaties. Federal diversity of citizenship jurisdiction exists when the amount in controversy exceeds US$75,000, excluding interest and costs, and the matter is between citizens of different US states, or citizens of a US state and citizens of a foreign state. Corporations usually are deemed to be citizens of the state in which they are incorporated and the state where they maintain their principal place of business.

There are two federal districts in Michigan: the Eastern District of Michigan and the Western District of Michigan. Each of the two districts is divided into a Southern Division and a Northern Division. The Southern District of the Eastern Division hears cases in Detroit, Ann Arbor, Flint and Port Huron. The Northern District of the Eastern Division hears cases in Bay City. The Southern Division of the Western District hears cases in Grand Rapids. The Northern Division of the Western District hears cases in Marquette.

Appeals from the two Michigan federal districts are to the US Court of Appeals for the Sixth Circuit. This court sits in Cincinnati, Ohio and takes appeals from Michigan, Kentucky, Ohio and Tennessee. Its decisions are reviewed by the US Supreme Court by petition, which are granted infrequently. In addition to reviewing the decisions of the US Court of Appeals for the Sixth Circuit, the US Supreme Court has the power to review Michigan state court decisions that involve a question of federal law.

Unless otherwise stated, the remainder of this chapter focuses on Michigan's state court system, as opposed to the federal system.

2 What is the role of the judge and the jury in civil proceedings?

Michigan law recognises the right to trial by jury. To preserve this right, a party must request a jury trial within 28 days after the defendant has filed an answer or other permitted response to the complaint. This right does not generally attach to claims seeking equitable relief such as injunctions or declaratory judgments, although the court has the discretion to have a jury decide issues in such cases. Actions filed with the court of claims are heard by a judge, not a jury.

In jury trials, the role of the jury is to decide questions of fact, whereas the role of the judge is to decide legal and procedural issues and to instruct the jury on the law. In cases where there is no right to a jury trial, or where the parties have waived that right, the judge decides issues of fact in addition to issues of law and procedure.

Michigan uses an adversarial system. Each party presents its own case at trial. Although each party examines its own witnesses, and those of the other party, judges also have the right to examine witnesses.

3 What are the time limits for bringing civil claims?

A party must file suit within certain time limits set by statute. In general, these limitation periods begin from the time the claim accrues. The limitation periods include the following:

- one year – libel or slander;
- two years – assault; battery; false imprisonment; malicious prosecution;
- three years – product liability actions; all other actions to recover damages for death of a person or injuries to persons or property;
- four years – breach of contract for sales of goods under the Uniform Commercial Code (UCC);
- six years – other non-UCC contract actions;

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- 10 years – actions to enforce non-contractual money obligations (ie, judicial judgment or decree); covenants in deeds; mortgages of real estate;
- 15 years – foreclosure on mortgages; and
- other – claims for malpractice must be brought within two years after the claim accrued or within six months after the plaintiff discovers or should have discovered the claim.

Michigan statutes provide for several exceptions to these limitation periods. For example, if a defendant fraudulently concealed the existence of the claim or the identity of persons liable, the action may be commenced within two years after the plaintiff discovered or should have discovered the existence of the claim or the identity of those liable. In most circumstances, courts will enforce private agreements to shorten or lengthen statutory limitation periods.

4 Are there any pre-action considerations the parties should take into account?

Prior to filing a complaint, the plaintiff's lawyer or, if the plaintiff is not represented by counsel, the plaintiff itself, must make a reasonable inquiry and conclude that the action is well grounded in fact and warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law. The lawsuit may not be filed for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation. The court may sanction parties and lawyers who fail to comply with this rule.

Parties are generally prohibited from taking discovery until after a suit has been filed. One exception to this rule is that a court may grant leave to permit a party to take discovery to perpetuate testimony or to determine the identity of those who may be liable.

5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Civil actions are commenced by filing a complaint with the clerk of the court. The complaint must be accompanied by a filing fee. After the complaint is filed, the clerk of the court issues a summons, which is valid for 91 days from the date on which the complaint was filed. The plaintiff then serves the summons and complaint on the defendant within the 91-day period and by one of the methods permitted by Michigan law. The proper method of service depends in large part on the nature of the defendant. The Michigan rules of civil procedure dictate specific delivery requirements for individuals, private and public corporations, partnerships, partnership associations, insurers, governmental bodies and agents appointed by law.

6 What is the typical procedure and timetable for a civil claim?

A defendant that has been personally served with the complaint within the state has 21 days to file an answer. A defendant that has been served outside the state or by registered mail has 28 days to file an answer. In lieu of or in addition to filing an answer, a defendant may within the same time period file a motion challenging the sufficiency of the complaint, the court's jurisdiction or other elements of the action.

A defendant must file any counterclaims or third-party complaints within this same 21 or 28-day period, after which it must obtain leave of the court. The plaintiff has 21 days after service of a counterclaim in which to file an answer.

The court determines the schedule for the rest of the case.

7 Can the parties control the procedure and the timetable?

After counsel for the parties have filed their appearances, many courts hold scheduling conferences with the lawyers to arrive at the timetable for the case, including deadlines for completion of discovery and motion practice and the selection of a date for trial. Other courts issue proposed scheduling orders that become final unless one or both of the parties seek to modify it. In determining the schedule, the court is likely to take into account a number of factors, including the amount at issue, the complexity of the case and the location of the witnesses and documents.

8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In state and federal court, prior to trial the parties have a right to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party may seek discovery from another by way of depositions on oral examination, depositions on written questions, interrogatories, requests for production of documents and other things, requests for entry upon land for inspection, physical and mental examinations of persons and requests for admission. A party may serve a subpoena upon non-parties seeking documents and deposition testimony.

A party may not withhold a document solely because it is unhelpful to its case. A party has a duty to preserve evidence when it becomes aware of litigation or potential litigation. It must not remove, destroy, delete or alter any document that is relevant to the litigation. Parties and attorneys that violate this duty to preserve may face severe civil and criminal penalties.

9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The attorney–client privilege attaches to communications made by a client to his or her attorney acting as a legal adviser and made for the purpose of obtaining legal advice on some right or obligation. The primary purpose of the privilege is to allow a client to speak openly with, and to confide in, his or her attorney, knowing that the communication will be confidential.

Additionally, the work-product doctrine protects against disclosure of all documents and tangible things prepared in anticipation of litigation or for trial, not only by attorneys but also by other representatives of a party, including a consultant, surety, indemnitor, insurer or agent. Michigan law allows limited discovery of these items only upon showing that the party has a substantial need for the material in the preparation of the case and is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means.

Michigan law applies both the attorney–client privilege and the work-product doctrine to in-house counsel providing legal assistance. In the context of the attorney–client privilege, conversations between a corporation's employees and in-house counsel are protected so long as the communications were made for the purpose of obtaining legal advice. Communications made to an in-house attorney by a client seeking business judgment or advice rather than legal advice are not privileged.

Michigan law also recognises privileges for accountants and their clients, clergy and their parishioners, physicians and their patients, psychologists and their patients, and spouses.

10 Do parties exchange written evidence from witnesses and experts prior to trial?

Michigan law provides limited privileges protecting written evidence from expert witnesses. In the case of a consultant expert, who will not testify at trial, privilege attaches to all communications between the party and the retained expert.

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Once an expert is disclosed as a testifying expert, however, the privileged status disappears. Michigan law provides that a party may take the deposition and seek other discovery of any expert whom the opposing party expects to call at trial. Anything reviewed or given to a testifying expert is discoverable.

All facts known and opinions held by a testifying expert are not considered work product and are discoverable by interrogatories, deposition or other discovery ordered by the court. The arrangement of the expert's facts and opinions in a report, made directly responsive to the inquiries of an attorney, is, however, work product and therefore subject to limited discovery. As with all work product, it is only discoverable when the inquiring party has substantial need for the material in the preparation of its case and is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means.

Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. The scope of discovery in regard to a party's lay witnesses is subject to this same standard. Discovery is limited only by a claim of privilege or irrelevance, or that the information sought is unlikely to lead to the discovery of admissible evidence.

11 How is evidence presented at trial? Do witnesses and experts give oral evidence?

Michigan courts allow trial evidence in the form of exhibits and documents, oral testimony by witnesses, cross-examination of these witnesses and, in some instances, including the unavailability of witnesses, taped depositions or deposition transcripts.

12 What interim remedies are available?

Michigan courts have the power to authorise several types of interim remedies. A court may issue a preliminary injunction to preserve the status quo while the case is being tried on the merits. This allows the parties' rights to be determined without injury to any party before final judgment. Courts award preliminary injunctions on the basis of four factors:

- the harm to the public interest if an injunction is issued;
- whether the harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted;
- the strength of the applicant's demonstration that he or she is likely to prevail on the merits; and
- demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted.

Preliminary injunctions are not awarded in the absence of notice and a hearing.

If it appears that damage will occur from the delay required to provide notice or await a hearing, the court may award a temporary restraining order. Temporary restraining orders are awarded upon a showing of immediate and irreparable injury, loss or damage. They are valid for only 14 days. They allow a trial court to preserve the status quo until a hearing can be held on a motion for a preliminary injunction.

Michigan law also allows courts to order pre-judgment attachment, whereby the plaintiff seizes and holds property of the defendant. The property must be located in Michigan. The defendant must be indebted to the plaintiff on a contract in a stated amount in excess of all setoffs. The defendant must be subject to judicial jurisdiction in Michigan, and the plaintiff must have made a diligent but unsuccessful effort to serve the defendant with process.

Michigan law similarly allows prejudgment garnishment, whereby the court can order a third party in possession of the defendant's assets to transfer those assets and then hold them pending final disposition of the action. Pre-judgment garnishment is subject to the same requirements as pre-judgment attachment.

Michigan statutes do not expressly provide for the use of the above remedies in support of foreign proceedings.

13 What substantive remedies are available?

Michigan permits compensatory damages, liquidated damages, court costs and, in certain narrow circumstances, attorneys' fees. Michigan permits 'exemplary' damages as compensation for mental suffering consisting of a sense of insult, indignity, humiliation or injury to feelings, but does not permit punitive damages for purposes of punishment. Michigan permits preliminary and permanent injunctions, declaratory judgments, temporary restraining orders, accounting, rescission, reformation, the quieting of title and partitions of property.

Courts may award post-judgment interest and, in some circumstances, pre-judgment interest or interest as a measure of damages. Michigan statutes dictate the rates of interest or the formulas for determining them.

14 What means of enforcement are available?

A judgment creditor has multiple avenues of recourse to enforce a judgment under Michigan law. First, it may initiate supplemental proceedings to assist in enforcement. This permits the party to take examination of both the debtor and a third party in possession of the debtor's property to determine the extent of the defendant's property and assets. The judgment creditor may execute against the debtor's property, seizing property to satisfy the judgment. The judgment creditor may also garnish assets to collect assets of the debtor in the hands of other third parties to satisfy the judgment. Unlike other states, a judgment creditor is not required to resort to the other remedies before resorting to garnishment.

If a party refuses to obey a court order, a court may hold the party in contempt, and fine or even imprison the individual until he or she complies with the order.

15 Are court hearings held in public? Are court documents available to the public?

The presumption is that all Michigan court proceedings are open to the public. However, the court has the discretion to close proceedings in cases involving national security in order to exclude witnesses from the courtroom when they are not testifying, or to exclude minors. Documents filed with the court are generally available to the public, although the court has the discretion to permit parties to file documents under seal to prevent confidential information such as trade secrets from being disseminated to the public.

16 Does the court have power to order costs?

Generally, Michigan law allows the prevailing party to recover costs except when prohibited by statute or rule, or the court otherwise directs. Costs include fees of officers and witnesses, as well as some disbursements incidental to trial. Additionally, courts generally uphold parties' agreements to apportion costs in a specific manner.

Michigan law gives the trial court discretion to order a party to file a bond with surety in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court when it finds it reasonable and proper to require such action.

Michigan follows the 'American Rule', under which attorneys' fees are not awarded unless specifically authorised by statute, court rule or common law exception. Courts will uphold parties' agreements concerning the apportionment of attorneys' fees. Additionally, several statutes allow parties to recover attorneys' fees in certain types of actions.

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17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Michigan law permits contingency agreements between lawyers and their clients. The agreement must be in writing and state the method by which the fee is determined. The fee cannot be clearly excessive. Contingency fees are not permitted in domestic relations matters or when representing a defendant in a criminal case.

Parties may initiate suits using third-party funding. Michigan has abolished the general prohibition against assisting another to maintain a suit in exchange for a share of the proceeds. This practice is now generally allowed. Michigan does, however, still forbid attorneys from providing financial assistance in connection with pending or contemplated litigation except to advance court costs and expenses or to pay them on behalf of an indigent client.

18 Is insurance available to cover all or part of a party's legal costs?

Insurance is available to cover a party's legal costs.

19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Michigan law permits parties to collectively bring similar claims in a class action lawsuit. Prior to certifying a class for class action treatment, the court must determine that:

- the class is so numerous that joinder of all members is impracticable;
- there are common questions of law or fact;
- the claims or defences of the representative parties are typical of the claims or defences of the class;
- the representative parties fairly and adequately protect the interest of the class; and
- the class action device is superior to other available methods of adjudication.

20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In general, a party may appeal as of right to the Michigan Court of Appeals from a final judgment of the circuit court. A party may appeal by leave to the Michigan Court of Appeals from a judgment or order of the circuit court that is not a final judgment.

Appeals to the Michigan Supreme Court are limited. The Supreme Court has the discretion to decide which appeals it will hear. In addition to showing a meritorious basis for appeal, the appellant must show one or more of the following:

- the issue involves a substantial question as to the validity of a legislative act;
- the issue has significant public interest and the case is by or against the state, a state agency or a subdivision thereof;
- the issue involves legal principals of major significance to the state's jurisprudence;
- delay in deciding the issue is likely to cause substantial harm; or
- the decision of the Court of Appeals is clearly erroneous and will cause material injustice, or conflicts with a Supreme Court or Court of Appeals decision.

21 What procedures exist for recognition and enforcement of foreign judgments?

Under the US Constitution, a state is required to give full faith and credit to public acts, records and judicial proceedings of every other US state. In order to enforce the judgment of another US state the rendering court must have had jurisdiction over the parties and the subject matter. Michigan courts can refuse to recognise and enforce judgments in unusual circumstances, such as where the judgment was obtained by fraud.

Foreign country money judgments may also be enforced in Michigan if they meet the requirements of the Uniform Foreign Money-Judgments Recognition Act. This Act allows Michigan courts to recognise foreign country judgments in the same manner as the judgment of a US state that is entitled to full faith and credit. The Act also lists various defences to recognising foreign judgments, such as where the foreign legal system did not provide an impartial tribunal or minimum due process, or where the court lacked personal or subject-matter jurisdiction in the case. The Act also provides discretionary defences, allowing the court to deny enforcement due to fraud, public policy or inconvenience of the foreign forum.

For judgments that do not fit the terms of the Foreign Money-Judgments Recognition Act, a court may recognise and enforce the judgment under principles of comity, ascertaining whether the basic rudiments of due process were followed, whether the parties were present in court and whether a hearing on the merits was held.

22 Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

A person authorised by the laws of another state or country to take a deposition in Michigan may petition a court to compel the deponent to testify. The court must be located in the county where the deponent is located. Similar petitions may be used to obtain documents in the state.

Arbitration

23 Is the arbitration law based on the UNCITRAL Model Law?

Michigan arbitration was, until 2003, governed by the Michigan Arbitration Act (MAA), Mich Comp Laws section 600.5001 et seq. Michigan recently enacted the Revised Uniform Arbitration Act (RUAA), which makes significant changes to the MAA. This law came into effect on 1 July 2013 and applies to all arbitrations initiated as of that date, regardless of when the parties executed the arbitration agreement.

The MAA continues to apply to actions or proceedings commenced before the RUAA took effect on 1 July 2013. Neither the MAA nor the RUAA is based on the UNCITRAL Model Law. If the dispute involves interstate commerce, the arbitration is governed by the Federal Arbitration Act (FAA), 9 USC section 1 et seq, to whatever extent that the FAA conflicts with the MAA or the RUAA. The FAA is not based on the UNCITRAL Model Law.

24 What are the formal requirements for an enforceable arbitration agreement?

Under Michigan law, arbitration agreements must meet all legal requirements of a contract. Further, both the MAA and the FAA require that an arbitration agreement be in writing, but do not require signature. The RUAA specifically calls for the enforcement of arbitration agreements in electronic form and does not include a signature requirement. The MAA requires that the arbitration agreement allow a court to render judgment upon the arbitration award. Michigan courts have interpreted this requirement strictly, requiring either the arbitration agreement itself or the arbitration rules chosen by the parties to allow a court to render judgment on the arbitration award. Without this language, courts have found arbitration agreements to be 'common law' arbitration agreements, revocable unilaterally by either party at any time before the arbitrator renders an award. The RUAA does not include the requirement that the arbitration agreement allow a court to render judgment upon the arbitration award, but does add notice requirements before a party may initiate arbitration.

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25 If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Under the FAA, the RUAA and the MAA, the number of arbitrators and the method of their appointment may be set by the parties' agreement to arbitrate. Under the MAA, if the agreement is silent or if the agreed method cannot be followed, the court has the power to decide the number of arbitrators and to appoint the arbitrators. The MAA allows a party to challenge the selection of an arbitrator on grounds of 'evident partiality'.

Under both the FAA and the RUAA, if the agreement is silent as to the number of arbitrators or the method of selection, a court may appoint one arbitrator. Neither the FAA nor the RUAA restricts the right of a party to challenge the appointment of an arbitrator.

26 Does the domestic law contain substantive requirements for the procedure to be followed?

Except for the broad requirement that the proceedings be impartial, the MAA, the RUAA and the FAA do not mandate any formal procedural requirements.

27 On what grounds can the court intervene during an arbitration?

The FAA, the RUAA and the MAA limit the court's authority to the following:

- enforcing the arbitration agreement;
- entering judgment on the award;
- vacating, modifying or correcting the award; and
- compelling the attendance of witnesses.

All three Acts preclude enforcement of an arbitration agreement that provides for court involvement in a manner that is not authorised by statute.

28 Do arbitrators have powers to grant interim relief?

The MAA and FAA are silent as to the authority of arbitrators to grant interim relief. However, the parties may agree to rules allowing the arbitrator to grant interim relief necessary to protect a party's rights, interests and property. Further, many Michigan state and federal courts have found that arbitrators may grant interim relief such as injunctive relief. The RUAA specifically permits arbitrators to award other remedies that the arbitrator considers just and appropriate under the circumstances of the arbitration.

29 When and in what form must the award be delivered?

The MAA does not dictate any time or form for an arbitration award; however, the new RUAA requires an arbitrator to make a record of an award and requires the arbitrator to 'sign or authorise' the award. The arbitrator must give notice and a copy of the award to each party. The award must be made within the time specified in the arbitration agreement or within a time period ordered by a court. The FAA's only requirement is that the award be in writing.

30 On what grounds can an award be appealed to the court?

A party may file a suit in a Michigan circuit court to vacate, modify or correct an arbitration award. An award may be vacated where any of the following apply:

- the award was procured by corruption, fraud or undue means;
- evident partiality of the arbitrator is shown;
- the arbitrator exceeded his or her powers; or
- the arbitrator refused to postpone the hearing on sufficient cause, refused to hear material evidence or conducted the hearing in a way that substantially prejudiced the rights of a party.

The new RUAA provides four additional bases for a court to vacate an award:

- corruption by an arbitrator;
- misconduct by an arbitrator prejudicing the right of a party to the proceeding;
- there was no agreement to arbitrate; or
- the arbitration was conducted without proper notice of the initiation of arbitration.

Under the RUAA, the motion must be made within 90 days after the moving party receives notice of the award or the modified or corrected award. The MAA requires the party to file a complaint within 21 days of the date of the award.

The MAA and the RUAA allow a court to modify or correct the award where:

- there is an evident miscalculation of numerical figures or an evident mistake in the description of a person, thing or property;
- the arbitrator has issued an award on a matter not submitted to him or her; or
- the award is imperfect in a matter of form not affecting the merits of the controversy.

Under the RUAA, a motion to modify or correct the award must be made within 90 days after the moving party receives notice of the award or the modified or corrected award. The MAA requires a party to file the motion within 21 days of the date the award was delivered to the applicant.

Under the FAA, a party likewise may file suit in a Michigan circuit court to vacate, modify or correct an arbitration award. The grounds for doing so are the same as those in the MAA. A party must file an application with the court within three months from the date the award was filed or delivered.

31 What procedures exist for enforcement of foreign and domestic awards?

Under the RUAA, the MAA and the FAA, an award may be confirmed by filing an action with the trial court. The RUAA does not prescribe a deadline for this filing, but both the MAA and the FAA require the action to be filed within one year of the award. Michigan courts require the party to file a complaint for this relief and open a new action, rather than just filing the award alone. After the court has confirmed the award it is enforceable in the same manner as a judgment in an ordinary civil action. See question 14 for more information.

Foreign awards are enforced under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the Inter-American Convention on International Commercial Arbitration (Inter-American Convention). Pursuant to these Conventions, the US courts may enforce arbitration awards originating in countries that are signatories to the Conventions. Both Conventions list various grounds under which a court may refuse to enforce the foreign award.

32 Can a successful party recover its costs?

The MAA and FAA are silent on an arbitrator's authority to award costs. Courts have found that arbitrators have the authority to award costs and attorneys' fees if the parties' agreement contemplates a successful party's recovery of expenses. The RUAA explicitly permits an arbitrator to award costs or fees if permitted by law in a civil action or by the parties' agreement. The RUAA also permits a court to award the prevailing party with costs and attorneys' fees related to motions and proceedings to confirm, vacate, modify or correct arbitration awards.

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Alternative dispute resolution

33 What types of ADR process are commonly used? Is a particular ADR process popular?

Parties in Michigan commonly use settlement conferences, case evaluation, mediation or arbitration to resolve their disputes outside of court.

The Michigan court rules provide that the circuit courts may order a case into a procedure called 'case evaluation'. Case evaluation typically occurs after the parties have taken discovery. The parties' lawyers submit to the case evaluation tribunal brief written summaries of their claims or defences. They then meet with a panel of three impartial lawyers for approximately 30 minutes during which they discuss the case. Thereafter, the panel renders a case evaluation, which is a dollar figure reflecting what the panel believes is the settlement value of the case. The parties have 28 days in which to confidentially accept or reject that figure. If all parties accept, the court enters judgment for that amount and the case is dismissed. If any party rejects and the case proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favourable to the rejecting party than the case evaluation.

Parties in complex litigation often prefer non-binding mediation over case evaluation.

34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Michigan judges can order the case to any of the above ADR processes and compel the parties to participate. A party may move to set aside such an order provided it does so within 14 days of its issuance.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

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